



UNIVERSITY OF  
**TORONTO**  
FACULTY OF LAW



# ADMINISTRATIVE LAW

## VOLUME II

Freya Kristjanson & Leslie McIntosh

Spring 2010

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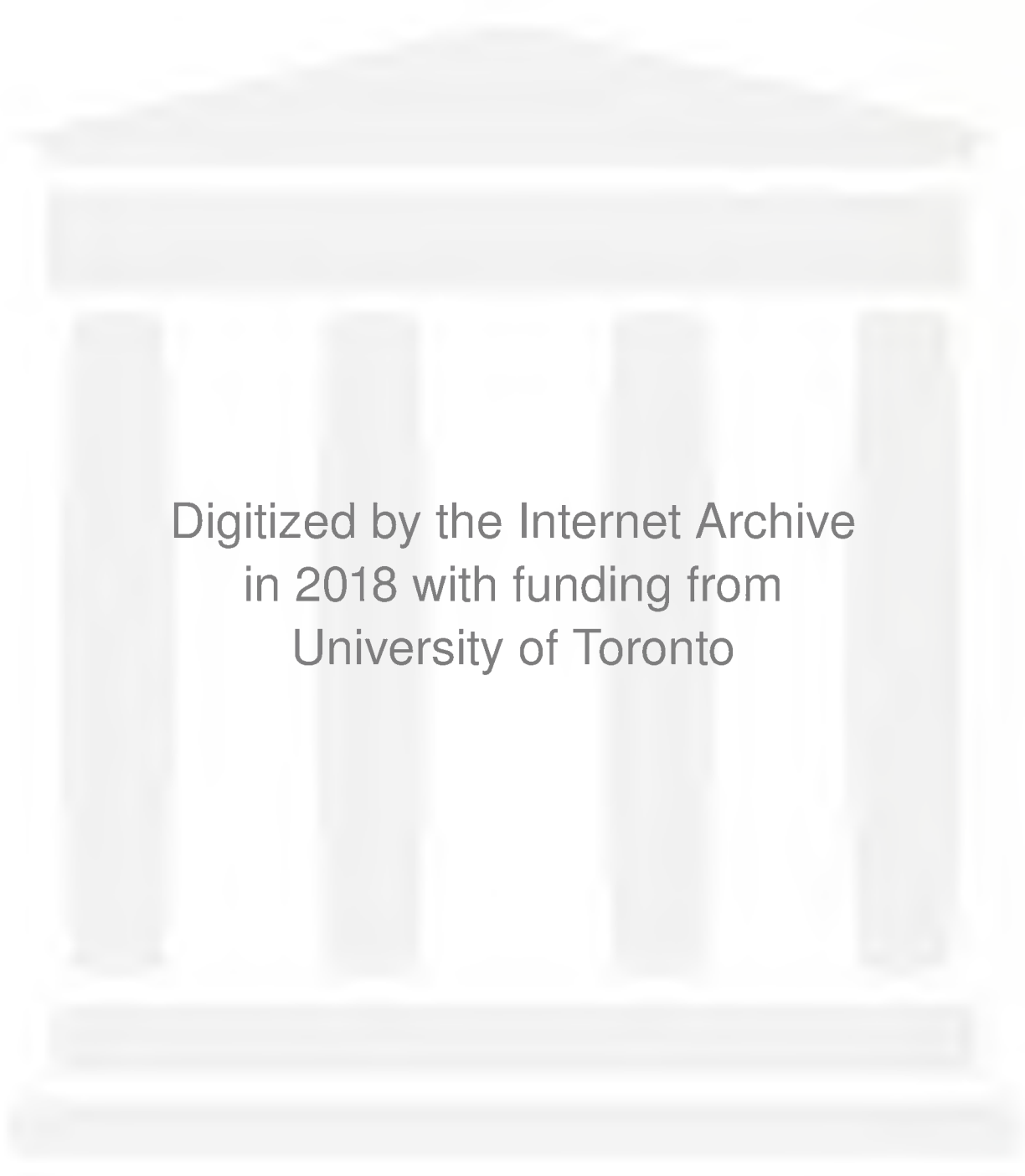


# **ADMINISTRATIVE LAW**

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## ADMINISTRATIVE LAW SPRING SEMESTER 2010

### Adjunct Professors Freya Kristjanson and Leslie McIntosh

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Class Hours: Tuesdays and Thursdays, 8:30am-10:30am

### Overview

Administrative law is the study of how governments and administrative tribunals may affect the rights and interests of individuals and groups, as well as the role of the courts in superintending administrative action. Administrative law issues arise in a diverse range of settings, including immigration and refugee law, labour law, health law, human rights law, environmental law, securities, banking and competition regulation, professional discipline, and decision-making in universities, hospitals and municipalities. The course will consider the rules and principles applicable to various kinds of decision-makers including government ministers, officials, administrative boards and tribunals, agencies and commissions. Specific topics include: the rule of law, procedural fairness considerations that govern investigation, rule-making, and adjudication by administrative agencies, the right to a hearing, independence and impartiality, the standard of review of administrative decisions, remedies for abuse of discretion, and the application of the *Charter* and constitutional principles in the administrative realm. Throughout the course the overriding questions will be: How is the public interest to be determined? How should the protection of individual and group rights and interests be balanced against the goals asserted by the administrative decision-maker?

### Texts

There is case book, Kristjanson & McIntosh, *Administrative Law*, 2010. The syllabus sets out the cases. Specific readings will be assigned in class or by Blackboard postings.

### Blackboard

There will be a Blackboard page for this course. Readings may be assigned by Blackboard and hand-outs may be posted on the Blackboard.

## **Recommended Reading**

For those seeking additional readings, the following sources are recommended:

- Guy Regimbald,, *Canadian Administrative Law* (Toronto: Lexis Nexis Canada Inc., 2008, 1<sup>st</sup> ed.)
- Brown and Evans, *Judicial Review of Administrative Action* (Brown & Evans, 1998) (Canada) (Looseleaf ed.)
- MaCaulay & Sprague, *Practice and Procedure before Tribunals* (Toronto: Carswell, 1988) (Looseleaf ed.)
- Sara Blake, *Administrative Law in Canada*, (Toronto: LexisNexis, 2006, 4<sup>th</sup> ed.)

## **Evaluation**

There will be a final, 3-hour open-book examination (100%).

## **Course Outline**

All page references are to the 2010 Administrative Law Case Book (CB), by volume number (CB I, CB II, CB III).

## **CLASS #1 - TUESDAY, JANUARY 5**

### **Introduction to Administrative Law**

(no assigned readings)

## **CLASS #2 - THURSDAY, JANUARY 7**

### **I. Overview: Foundations of the Modern Administrative State**

1. Colleen Flood, "An Introduction to (the Effervescence of) Administrative Law, in Colleen Flood and Lorne Sossin, eds., *Administrative Law in Context* (2008, Emond Montgomery Publications Limited, Toronto, CB I, p. 1

## **CLASS #3 - TUESDAY, JANUARY 12**

### **II. Overview: The Duty of Fairness – The Modern Expression**

- (a) Common Law
  1. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, CB I, p. 24
- (b) Charter
  1. *Suresh v. Canada (Minister of Citizenship and Immigration)*, (2002), 208 D.L.R. (4<sup>th</sup>) 1, paras. 113-128, CB I, p. 45

## **CLASS #4 - THURSDAY, JANUARY 14**

### **III. Overview: The Rule of Law and Judicial Review of Administrative Action**

- (a) *Dunsmuir v. New Brunswick*, 2008 SCC 9, CB I, p. 52

## **CLASS #5 - TUESDAY, JANUARY 19**

### **IV. The Duty of Fairness**

- A. Evolution of the Duty of Fairness

- (a) *Calgary Power Ltd. v. Copithorne*, [1959] S.C.R. 24, 16 D.L.R. (2d) 241, CB I, p. 114
- (b) *Nicholson v. Haldimand-Norfolk* (1979), 88 D.L.R. 671 (S.C.C.), CB I, p. 122
- (c) *Martineau v. Matsqui Inmate Disciplinary Board*, [1980] 1 S.C.R. 602, CB I, p. 129

#### **CLASS #6 - THURSDAY, JANUARY 21**

- B. Sources of Procedural Fairness - *Statutory Powers Procedure Act*
- (a) *Statutory Powers Procedure Act*, R.S.O. 1990, c.22, CB I, p. 140

#### **CLASS #7 - TUESDAY, JANUARY 26**

- C. Threshold – When Does the Duty Arise?
- (a) Rights, Privileges and Interests – Guy Regimbald, *Canadian Administrative Law* (2008, Lexis Nexis Canada Inc., 1<sup>st</sup> ed.), pp. 230-244, CB I, p. 162
- (b) No Fairness Duty: General Policy /Legislative Decision-Making
  - 1. *Canada (Attorney General) v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735, 115 D.L.R. (3d) 1 (Fed.) , CB I, p. 178
  - 2. *Authorson v. Canada (Attorney General)*, 2003 S.C.C. 39, 227 D.L.R. (4<sup>th</sup>) 385, CB I, p. 188
- (c) Legitimate Expectations
  - 3. Guy Regimbald, *Canadian Administrative Law* (2008, Lexis Nexis Canada Inc., 1<sup>st</sup> ed.), pp.288-298, CB I, p. 197
  - 4. *Khadr v. Canada (A.G.)*, 2006 F.C.J. No. 888 (F.C.A.), CB I., p. 208

#### **CLASS #8 - THURSDAY JANUARY 28**

- (a) Investigating/Advising/Recommending
  - 1. Mullan, pp. 166-170, CB I, p. 220



2. *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System- Krever Commission)*, [1997] 3 S.C.R. 440, 151 D.L.R. (4th) 1 (Fed.), para. 1, 7-9, 30-31, 34, 55-57, CB I, p. 225
3. *Masters v. Ontario* (1994), 18 O.R. (3d) 551 (Div. Ct.), 115 D.L.R. (4th) 319, CB I, p. 236

D. Procedural Rights – Elements of the Duty of Fairness

1. Hearing Stage – Oral Hearings, Public Hearings

- (a) *Khan v. University of Ottawa* (1997), 34 O.R. (3d) 535 (C.A.), CB I, p. 258
- (b) *Xwave Solutions Inc. v. Canada (Public Works & Government Services)*, (2003) 5 Admin. L.R. (4<sup>th</sup>) 280 (FCA) , CB I, p. 270.
- (c) *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, paras. 53-64, CB I, p. 277

**CLASS #9 - TUESDAY, FEBRUARY 2**

2. Notice and Scope of Hearing:

- (a) *Canada (CRTC) v. CTV Television Network*, [1982] 1 S.C.R. 530, CB II, p. 311
- (a) *Supermarchés Jean Labrecque Inc. v. Flamand*, [1987] 2 S.C.R. 219, CB II, p. 314
- (a) *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, [1995] 2 S.C.R. 781, 125 D.L.R. (4th) 471, CB II, p. 324
- (b) *Canadian Pacific Railway Co. v. Vancouver (City)*, [2006] 1 S.C.R. 227, 2006 SCC 5, CB II, p. 329
- (c) *Henderson v. College of Physicians and Surgeons of Ontario*, [2003] O.J. No. 2213 (C.A.), CB II., p. 342
- (d) *Wong v. College of Traditional Chinese Medical Practitioners and Acupuncturists of British Columbia*, [2005] B.C.J. No. 2219 (C.A.) , CB II, p. 349
- (e) *SPPA*, ss. 6, 7 and 8

#### CLASS #10 - THURSDAY, FEBRUARY 4

E. Disclosure and Discovery

- (a) *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] 2 S.C.R. 713; 232 D.L.R. (4<sup>th</sup>) 1, CB II, p. 360
- (b) *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809, 238 D.L.R. (4<sup>th</sup>) 1, CB II, p. 367
- (c) *Ontario Human Rights Commission v. Dofasco* (2001), 57 O.R. (3d) 693 (C.A.), CB II, p. 370
- (d) *May v. Ferndale Institution*, [2005] 3 S.C.R., 809, paras. 89-120, CB II., p. 380
- (e) *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 (“Charkaoui #2”), CB II, p. 387

#### CLASS #11 - TUESDAY, FEBRUARY 9

F. Statutes and Regulations

- (a) *Ontario Disability Support Program Act*, S.O. 1997, c.25, Schedule B and O.Reg.222/98, as amended and O.Reg.562/05, as amended (excerpts) , CB II, p. 410
- (b) *University of Toronto Act, 1971*, S.O. 1971, c.56 and Code of Behaviour on Academic Matters (June 1, 1995) , CB II, p. 434

#### CLASS #12 - THURSDAY, FEBRUARY 11

G. Policies and Rules

- (a) Mullan, pp. 675-679 & 684, CB II, p. 449
- (b) *Capital Cities v. CRTC*, [1978] 2 S.C.R. 141, CB II, p. 455
- (c) *Ainsley Financial Corp. v. Ontario Securities Commission* (1994), 21 O.R. (3d) 104 (C.A.) , CB II, p. 461
- (d) *Thamotharem v. Canada (Minister of Citizenship & Immigration)*, 2007 FCA 198 (CanLII) , 60 Admin. L.R. (4th) 247, CB II, p. 465
- (e) Social Benefits Tribunal, Practice Directions, Excerpts, CB II, p. 485

## **READING WEEK**

### **CLASS #13 - TUESDAY, FEBRUARY 23**

#### H. Right to Counsel , Cross-Examination, Delay and Adjournments

1. Guy Regimbald., *Canadian Administrative Law* (Toronto: Lexis Nexis Canada Inc., 2008, 1<sup>st</sup> ed.), pp. 266-275 and 282-288, CB II, p. 488
2. Mullan, pp. 456-462, CB II, p. 505

#### I. Decision on the Record and Reasons

1. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4<sup>th</sup>) 193, CB I, p. 24
2. *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105, 110 D.L.R. (3d) 311, CB II, p. 509
3. *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] 2 S.C.R. 650, 2004 SCC 48, CB II, p. 515
4. *Gray v. Ontario (Director, Disability Support Program)*, [2002] O.J. No. 1531 (QL) (CA), CB II, p. 527

### **CLASS #14 - THURSDAY, FEBRUARY 25**

#### **V. Bias**

##### A. Impartiality – Personal Interest, Prejudgment, Attitudinal Bias

1. *R. v. Valente* (1985), 24 D.L.R. (4<sup>th</sup>) 161 (S.C.C.), CB II, p. 532
2. *Old St. Boniface Residents Assn. v. Winnipeg (City)* (1990), 75 D.L.R. (4<sup>th</sup>) 385 (S.C.C.), CB II, p. 549
3. *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623, 89 D.L.R. (4<sup>th</sup>) 289, CB II, p. 557
4. *Baker*, pp. 220-223, para. 45-50, CB I, p. 24

### **CLASS #15 - TUESDAY, MARCH 2**

#### B. Tribunal Impartiality and Independence

1. *International Woodworkers of America, Local 2-69 v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, 68 D.L.R. (4th) 524, CB II, p. 566
2. *C.U.P.E. v. Minister of Labour*, [2003] 1 S.C.R. 539, CB II, p. 583

#### **CLASS #16 - THURSDAY, MARCH 4**

##### **C. Structural Independence**

1. *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3, 122 D.L.R. (4th) 129, CB II, p. 609
2. *Ocean Port Hotel Ltd. v. British Columbia (Liquor Control and Licensing Branch, General Manager)*, [2001] 2 S.C.R. 781, 204 D.L.R. (4th) 33, CB II, p. 629

#### **CLASS #17 - TUESDAY, MARCH 9**

##### **VI. Tribunal Jurisdiction - Constitution and Human Rights Codes**

1. *Nova Scotia (Worker's Compensation Board) v. Martin*, [2003] 2 S.C.R. 504; 231 D.L.R. (4th) 385, CB III, p. 639
2. *Paul v. British Columbia (Forest Appeals Commission)*, [2003] 2 S.C.R. 585; 231 D.L.R. (4th) 449, CB III, p. 656
3. *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513; 266 D.L.R. (4th) 287, CB III, p. 667

#### **CLASS #18 - THURSDAY, MARCH 11**

##### **VII. Statutory Appeals and Judicial Review: Overview**

1. *ODSPA*, s.31, CB II, p. 410
2. *Crevier v. Quebec (Attorney General)*, [1981] 2 S.C.R. 220, 127 D.L.R. (3d) 1, CB III, p. 683
3. *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1, as amended, CB III, p. 686

#### **CLASS #19 - TUESDAY, MARCH 16**

##### **A. Standard of Review**

1. Guy Regimbald, *Canadian Administrative Law* (Toronto: Lexis Nexis Canada Inc., 2008, 1<sup>st</sup> ed.), pp. 377-395 and 400-416, CB III, p. 690

## CLASS #20 - THURSDAY, MARCH 18

2. *Dunsmuir v. New Brunswick*, 2008 SCC 9, CB I, p 52
3. *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, CB III, p. 727.

## CLASS #21 - TUESDAY, MARCH 23

### B. Discretion and Justiciability

1. Mullan, pp. 951-953, CB III, p. 777
2. *Roncarelli v. Duplessis*, [1959] S.C.R. 121, pp. 130-145, CB III, p. 780
3. *Multi-Malls Inc. v. Ontario (Minister of Transport & Communications)* (1976), 14 O.R. (2d) 49, 73 D.L.R. (3d) 18 (C.A.), CB III, p. 791
4. *Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441, 18 D.L.R. (4th) 481 at pp. 481-494, CB III, p. 801

## CLASS #22 - THURSDAY, MARCH 25

### C. Parties and Standing

1. *Northwestern Utilities Ltd. v. City of Edmonton*, [1979] 1 S.C.R. 684, pp. 706-711, CB III, p. 831
2. *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)* (2005), 75 O.R. (3d) 309, pp. 315-324 (C.A.), CB III, p. 842
3. *Canadian Council of Churches v. Canada (Minister of Employment & Immigration)*, [1992] 1 S.C.R. 236, 88 D.L.R. (4th) 193, pp. 197-204, CB III, p. 822
4. *Sutcliffe v. Ontario (Minister of the Environment)* (2004), 69 O.R. (3d) 257 (C.A.), CB III, p. 851

## CLASS #23 - THURSDAY, APRIL 1

### D. Collateral Attacks

1. *R. v. Consolidated Maybrun Mines Ltd.*, [1998] 1 S.C.R. 706, 158 D.L.R. (3d) 193, pp. 206-214, CB III, p. 878

### E. Exhaustion of Alternative Remedies/Prematurity

1. *Canadian Pacific Ltd. v. Matsqui Indian Band*, pp. 149-151, para. 54-60, CB II, p. 609
2. *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561, pp. 587-594, CB III, p. 857

#### **CLASS #24 - TUESDAY, APRIL 6**

##### **F. Remedies**

1. *Seaway Trust Co. v. Ontario* (1983), 41 O.R. (2d) 501 (Div. Ct.); 41 O.R. (2d) 532 (C.A.), CB III, p. 892
2. *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, 232 D.L.R. (4th) 577, pp. 597-606, CB III, p. 900
3. *Mt. Sinai Hospital v. Quebec (Minister of Health and Social Services)*, [2001] 2 S.C.R. 281, 200 D.L.R. (4th) 193, pp. 223-242, CB III, p. 907

#### **CLASS #25 - THURSDAY, APRIL 8**

##### **Exam Review**